

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION

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KENNETH J. MURPHY  
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U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION

ANTONIO MOORE,	:	Case No. C-1-02-0430
Plaintiff,	:	(J. Weber)
v.	:	
KROGER COMPANY, et al.,	:	AFFIDAVIT OF ANTONIO
Defendants.	:	MOORE SUBMITTED IN
	:	OPPOSITION TO
	:	DEFENDANTS' MOTIONS
	:	<u>FOR SUMMARY JUDGMENT</u>
	:	
	:	

Affiant, Antonio Moore, being duly cautioned and sworn, states as follows:

1. I, Antonio Moore, am the Plaintiff in this lawsuit, am competent to testify herein, and have personal knowledge of the facts related in this affidavit.
2. I am self-employed, and own my own business. I do the banking for my business at the Fifth Third Bank branch located in the Defendant Kroger grocery store at 4777 Kenard Avenue, in Cincinnati.
3. On June 21, 2001, I needed to make a deposit for my business after work, and arrived at Krogers shortly before the Kroger store and the bank were scheduled to close.
4. On the evening of June 21, 2001, Defendant Officer Marcus McNeil of the City of Cincinnati Police Division was on duty as a special duty officer at Krogers at 4777 Kenard. Defendant McNeil was wearing his regular Cincinnati Police Division uniform. Defendant McNeil possessed his badge and utility belt with a City-issued nightstick, service weapon and

radio. Defendant McNeil was standing outside of the Kroger's store near the entrance when I parked in the parking lot.

5. There was an empty parking space near the door of the Kroger store. A sign marked "Reserved for Police Cars" was at the pole in front of the parking space. I parked in the parking space. There were no signs indicating that nonpolice cars were not allowed to use the parking space. In fact, Plaintiff on previous occasions parked in that parking space while in Defendant McNeil's presence. While at Krogers on other occasions, I witnessed other unmarked cars and sport utility vehicles regularly parked in the space marked "Reserved for Police Cars."

6. After I exited my vehicle to begin walking toward the entrance to the store, Defendant McNeil approached me and stopped me from entering the store and demanded that I move my vehicle. Defendant McNeil was not polite, and in fact was very rude and offensive. I explained that I would only be a couple of minutes, and needed to make a deposit before the bank closed, and I told Defendant McNeil that he could give me a ticket or tow the truck if he had to do that, but that I really needed to make the deposit. Defendant McNeil persisted in detaining me, would not allow me to enter the store, and then told me to "move my car or go to jail." I again told Defendant McNeil to please either ticket me or tow the truck because I really needed to make the deposit. Defendant McNeil then told me "your going to jail." I asked Defendant McNeil to call his supervisor. He did not respond to my request.

7. By this time, people entering and exiting the store were stopping to observe Defendant McNeil's confrontation with me over my selection of parking spot. No observer said anything to Defendant McNeil, nor did anyone physically threaten Defendant McNeil or do anything that could be interpreted as threatening to Defendant McNeil.

8. I did not act in any disorderly way or say anything offensive to Officer McNeil; I simply did not agree that I was under any legal obligation to move my vehicle upon orders from him and I told him that, and I also did not appreciate being treated in such a rude and offensive manner and threatened with arrest and incarceration for something which I knew was not a crime. I am not a criminal and I did not deserve to be treated like one, which I found to be particularly offensive in front of a group of people in a public place at a store and bank where I very frequently do business with the employees and management.

9. Defendant McNeil told me specifically more than once that his problem was that I would not move my car, and that if I did not move my car he was going to "take me to jail." The words "disorderly conduct" were never uttered to me by any officer on the scene at any time. In fact, I was never told what I was even being charged with when I was arrested. I was not told until after I was incarcerated in the Hamilton County Justice Center that I was being charged with "disorderly conduct."

10. After telling me he was taking me to jail, Defendant McNeil requested more uniformed Cincinnati Police officers respond to the scene on his radio. Defendant Officer Michael Schulte responded to Moore's request.

11. After Defendant Schulte's arrival on the scene, I did not engage in any disorderly conduct nor did I say anything offensive to the officers. I simply refused to move my car as I did not believe I was legally obligated to do so, and I did not appreciate being rudely and offensively threatened with arrest and incarceration for something I knew did not constitute a crime. Defendant Schulte also told me I would be arrested if I did not move my car. I refused to move my car and Defendant McNeil locked me in handcuffs and placed me under arrest and put me in

the back of his police car.

12. Defendant Lieutenant Dale Bley, then arrived at the scene. Lt. Bley spoke to me while I was in the back of the police car and told me that "this whole thing will go away if you just move your truck."

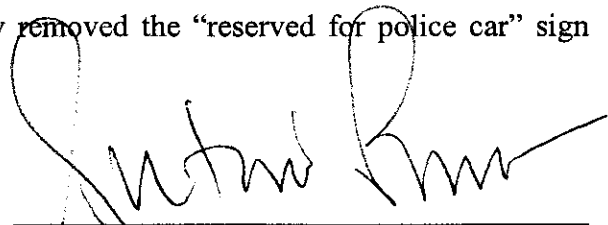
13. I told Defendant Bley that I did not see how it could just go away, being as I had already been arrested, and I again refused to move my car. Defendant Schulte transported me to the Hamilton County Justice Center where I was photographed and fingerprinted.

14. I was incarcerated for several hours before I was released on bond.

15. I had to hire an attorney to defend against the criminal charge assigned the case number /01/CRB/204079 on the docket of the Hamilton County Municipal Court. At trial, Defendant Schulte testified that my "behavior" was not disorderly, but that my "vocal actions" were disorderly.

16. On July 24, 2001, after the State presented its evidence, Hamilton County Municipal Court Judge John Burlew dismissed the charge because the evidence was insufficient to sustain a conviction. On the Court's Journal Entry, Judge Burlew noted "No fighting words" after granting a dismissal of the charge. A true and accurate copy of the transcript of proceedings and Judge Burlew's order of dismissal are attached hereto as Exhibits A and B.

17. Defendant Kroger has subsequently removed the "reserved for police car" sign from the post at the parking space.



Antonio Moore

STATE OF OHIO :  
COUNTY OF HAMILTON : SS:

Be it remembered on the 20th day of November, 2003, Antonio Moore did appear before me, a notary public in and for the State of Ohio and the County of Hamilton and acknowledged that the foregoing signature is his/her signature which he/she affixed as his free act and deed.

  
Notary

**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing Affidavit is being served via electronic notification through the court to all parties entitled to service under Rule 5 of the Federal Rules of Civil Procedure on the 25<sup>th</sup> day of November, 2003.

  
W. Kelly Lundrigan

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